

HOUSE BILL REPORT

SHB 1079

As Passed House:

February 20, 2009

Title: An act relating to substitution of growth management hearings board members in the case of vacancy, disqualification, illness, or injury.

Brief Description: Authorizing the substitution of growth management hearings board members in the case of vacancy, disqualification, illness, or injury.

Sponsors: House Committee on Local Government & Housing (originally sponsored by Representatives Simpson, Nelson, Springer, White and Moeller; by request of Growth Management Hearings Board).

Brief History:

Committee Activity:

Local Government & Housing: 1/15/09, 1/22/09 [DPS].

Floor Activity

Passed House: 2/20/09, 58-36.

Brief Summary of Substitute Bill

- Authorizes members of a Growth Management Hearings Board (Board or Hearings Board) to select a member from a different Hearings Board to substitute for an unavailable member and render a case decision.
- Authorizes substitutions to be made only in the event of a vacancy, disqualification, illness, or injury.
- Requires the Board selecting a substitute member to attempt to maintain the applicable requirements governing the composition of Boards.

HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Simpson, Chair; Nelson, Vice Chair; Miloscia, Springer, Upthegrove, White and Williams.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 3 members: Representatives Angel, Ranking Minority Member; Ericksen, Assistant Ranking Minority Member; and Short.

Staff: Ethan Moreno (786-7386)

Background:

The Growth Management Act (GMA or Act) is the comprehensive land use planning framework for county and city governments in Washington. Enacted in 1990 and 1991, the GMA establishes numerous requirements for local governments obligated by mandate or choice to fully plan under the Act and a reduced number of directives for all other counties and cities. Twenty-nine of Washington's 39 counties, and the cities within those counties, fully plan under the Act.

The GMA establishes three regional Growth Management Hearings Boards (Boards). Each Board consists of three members qualified by experience or training who also meet residency requirements. Compositional provisions for Boards require at least one member to be admitted to practice law in Washington and at least one member to have been a city or county elected official. Additionally, no more than two members of a Board may be from the same political party. Board members are appointed by the Governor to six-year terms.

Boards have limited jurisdiction and may only hear and determine petitions alleging:

- that a state agency or planning jurisdiction is noncompliant with the GMA, specific provisions of the Shoreline Management Act, or certain mandates of the State Environmental Policy Act relating to qualifying plans, regulations, or amendments; or
- that the 20-year planning population projections adopted by the Office of Financial Management should be adjusted.

Boards must make findings of fact and prepare a written decision in each decided case. Findings of fact and decisions become effective upon being signed by two or more members and upon being filed at the applicable Board office. Final decisions of the Boards may be appealed to the superior court. Additionally, if all parties agree, the superior court may directly review a petition filed with a Board.

Boards are governed by statutory requirements for conduct and procedure. For example, a majority of a Board constitutes a quorum for making decisions, adopting rules, and conducting other official business.

Summary of Substitute Bill:

If, due to vacancy, disqualification, illness, or injury, only two members of a Board are available to render a decision on a case, the two remaining members may select a member from a different Board to substitute for the unavailable member and render a decision on that case only. In selecting a substitute member, the Board must attempt to maintain the applicable requirements governing the composition of Boards. Requirements pertaining to findings of fact and decisions are modified to specify that such findings and decisions must,

in addition to other requirements, be signed by two or more members who participated in deciding the matter.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support of original bill) This is a simple bill: Boards are asking for the ability, when they are short a member, to invite or appoint a member from a different Board to participate in a decision. The provision in the bill that obligates the Board appointing a substitute to attempt to maintain the compositional parameters is a practical approach to the issue: substitutions are limited by member availability.

If only two members are available for a decision and they disagree, the decision defaults in favor of the municipality. These defaults still require time and effort from the parties, but the case is not resolved on its merits.

(With concerns) The requirement obligating the appointing Board to attempt to maintain compositional requirements for Boards is concerning. The "attempt to" language should be deleted. Boards have balance, balance provides well-reasoned and thoughtful actions, and this balance should be maintained.

(Opposed to original bill) None.

Persons Testifying: (In support of original bill) Holly Gadbow, Western Washington Growth Management Hearings Board; Ed McGuire, Central Puget Sound Growth Management Hearings Board; and Ray Paolella, Eastern Washington Growth Management Hearings Board.

(With concerns) Chris McCabe, Association of Washington Businesses; and Van Collins, Associated General Contractors.

Persons Signed In To Testify But Not Testifying: None.